- (1) each particular band of spectrum being used by the Department of Defense;
- (2) a description of each purpose for which a particular band described in paragraph (1) is being used, and how much of the band is being used for that purpose;
- (3) the State or other geographic area in which a particular band described in paragraph (1) is assigned or allocated for use;
- (4) whether a particular band described in paragraph (1) is used exclusively by the Department of Defense or shared with another Federal entity or a non-Federal entity; and

(5) any portion of the spectrum that is not being used by the Department of Defense.

(c) FORM OF REPORT.—The report required under subsection (a)(2) shall be submitted in unclassified form but may include a classified annex.

SA 2266. Mr. LEE submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASSIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table: as follows:

Strike section 11513 and insert the following:

#### SEC. 11513. REPEAL OF BUY AMERICA REQUIRE-MENTS.

- (a) IN GENERAL.—Section 313 of title 23, United States Code, is repealed.
  - (b) Conforming Amendments.—
- (1) The analysis for chapter 3 of title 23, United States Code, is amended by striking the item relating to section 313.
- (2) Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (23 U.S.C. 313 note: Public Law 110-244) is repealed.
- (3) The table of contents in section 1(b) of the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244; 122 Stat. 1572) is amended by striking the item relating to section 117.
- (4) Section 122 of title I of division L of the Consolidated Appropriations Act, 2021 (23 U.S.C. 313 note; Public Law 116–260) is repealed.
- SA 2267. Mr. LEE submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASSIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

# DIVISION ——NATIONAL ENVIRON-MENTAL POLICY ACT MODIFICATIONS SEC. \_\_\_\_\_. NATIONAL ENVIRONMENTAL POLICY ACT MODIFICATIONS.

- (a) NATIONAL ENVIRONMENTAL POLICY ACT MODIFICATIONS.—
- (1) APPLICABLE TIMELINES.—Title I of the National Environmental Policy Act of 1969 is amended—
- (A) by redesignating section 105 (42 U.S.C. 4335) as section 108; and
- (B) by inserting after section 104 (42 U.S.C. 4334) the following:

## "SEC. 105. PROCESS REQUIREMENTS.

 $\lq\lq(a)$  Definitions.—In this section:

- "(1) FEDERAL AGENCY.—The term 'Federal agency' includes a State that has assumed the responsibility of a Federal agency under—
  - "(A) section 107; or
- "(B) section 327 of title 23, United States Code.
- "(2) HEAD OF A FEDERAL AGENCY.—The term 'head of a Federal agency' includes the governor or head of an applicable State agency of a State that has assumed the responsibility of a Federal agency under—
  - "(A) section 107; or
- "(B) section 327 of title 23, United States Code.
  - "(b) Applicable Timelines.—
  - "(1) NEPA PROCESS.—
- "(A) IN GENERAL.—The head of a Federal agency shall complete the NEPA process for a proposed action of the Federal agency, as described in section 109(3)(B)(ii), not later than 2 years after the date described in section 109(3)(B)(i).
- "(B) ENVIRONMENTAL DOCUMENTS.—Within the period described in subparagraph (A), not later than 1 year after the date described in section 109(3)(B)(i), the head of the Federal agency shall, with respect to the proposed action—
- "(i) issue-
- $\lq\lq(I)$  a finding that a categorical exclusion applies to the proposed action; or
- "(II) a finding of no significant impact; or "(iI) publish a notice of intent to prepare an environmental impact statement in the Federal Register.
- "(C) ENVIRONMENTAL IMPACT STATEMENT.—
  If the head of a Federal agency publishes a notice of intent described in subparagraph (B)(ii), within the period described in subparagraph (A) and not later than 1 year after the date on which the head of the Federal agency publishes the notice of intent, the head of the Federal agency shall complete the environmental impact statement and, if necessary, any supplemental environmental impact statement for the proposed action.
- "(D) PENALTIES.—
- "(i) DEFINITIONS.—In this subparagraph:
- "(I) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.
- "(II) FEDERAL AGENCY.—The term 'Federal agency' does not include a State.
- "(III) FINAL NEPA COMPLIANCE DATE.—The term 'final NEPA compliance date', with respect to a proposed action, means the date by which the head of a Federal agency is required to complete the NEPA process under subparagraph (A).
- "(IV) HEAD OF A FEDERAL AGENCY.—The term 'head of a Federal agency' does not include the governor or head of a State agency of a State.
- "(V) INITIAL EIS COMPLIANCE DATE.—The term 'initial EIS compliance date', with respect to a proposed action for which a Federal agency published a notice of intent described in subparagraph (B)(ii), means the date by which an environmental impact statement for that proposed action is required to be completed under subparagraph (C).
- "(VI) INITIAL NEPA COMPLIANCE DATE.—The term 'initial NEPA compliance date', with respect to a proposed action, means the date by which the head of a Federal agency is required to issue or publish a document described in subparagraph (B) for that proposed action under that subparagraph.
- "(VII) INITIAL NONCOMPLIANCE DETERMINATION.—The term 'initial noncompliance determination' means a determination under clause (ii)(I)(bb) that the head of a Federal agency has not complied with the requirements of subparagraph (A), (B), or (C).
  - '(ii) INITIAL NONCOMPLIANCE.-
  - "(I) DETERMINATION.—

- "(aa) NOTIFICATION.—As soon as practicable after the date described in section 109(3)(B)(i) for a proposed action of a Federal agency, the head of the Federal agency shall notify the Director that the head of the Federal agency is beginning the NEPA process for that proposed action.
  - "(bb) Determinations of compliance.-
- "(AA) INITIAL DETERMINATION.—As soon as practicable after the initial NEPA compliance date for a proposed action, the Director shall determine whether, as of the initial NEPA compliance date, the head of the Federal agency has complied with subparagraph (B) for that proposed action.
- "(BB) ENVIRONMENTAL IMPACT STATE-MENT.—With respect to a proposed action of a Federal agency in which the head of the Federal agency publishes a notice of intent described in subparagraph (B)(ii), as soon as practicable after the initial EIS compliance date for a proposed action, the Director shall determine whether, as of the initial EIS compliance date, the head of the Federal agency has complied with subparagraph (C) for that proposed action.
- "(CC) COMPLETION OF NEPA PROCESS.—As soon as practicable after the final NEPA compliance date for a proposed action, the Director shall determine whether, as of the final NEPA compliance date, the head of the Federal agency has complied with subparagraph (A) for that proposed action.
- "(II) IDENTIFICATION; PENALTY; NOTIFICATION.—If the Director makes an initial noncompliance determination for a proposed action—
- "(aa) the Director shall identify the account for the salaries and expenses of the office of the head of the Federal agency, or an equivalent account:
- "(bb) beginning on the day after the date on which the Director makes the initial non-compliance determination, the amount that the head of the Federal agency may obligate from the account identified under item (aa) for the fiscal year during which the determination is made shall be reduced by 0.5 percent from the amount initially made available for the account for that fiscal year; and
- "(cc) the Director shall notify the head of the Federal agency of—
- ``(AA) the initial noncompliance determination;
- "(BB) the account identified under item (aa); and
- "(CC) the reduction under item (bb).
- '(iii) CONTINUED NONCOMPLIANCE.-
- "(I) DETERMINATION.—Every 90 days after the date of an initial noncompliance determination, the Director shall determine whether the head of the Federal agency has complied with the applicable requirements of subparagraphs (A) through (C) for the proposed action, until the date on which the Director determines that the head of the Federal agency has completed the NEPA process for the proposed action.
- "(II) PENALTY; NOTIFICATION.—For each determination made by the Director under subclause (I) that the head of a Federal agency has not complied with a requirement of subparagraph (A), (B), or (C) for a proposed action—
- "(aa) the amount that the head of the Federal agency may obligate from the account identified under clause (ii)(II)(aa) for the fiscal year during which the most recent determination under subclause (I) is made shall be reduced by 0.5 percent from the amount initially made available for the account for that fiscal year; and
- "(bb) the Director shall notify the head of the Federal agency of—
- "(AA) the determination under subclause (I); and
  - "(BB) the reduction under item (aa).
  - "(iv) REQUIREMENTS.—

- "(I) AMOUNTS NOT RESTORED.—A reduction in the amount that the head of a Federal agency may obligate under clause (ii)(II)(bb) or (iii)(II)(aa) during a fiscal year shall not be restored for that fiscal year, without regard to whether the head of a Federal agency completes the NEPA process for the proposed action with respect to which the Director made an initial noncompliance determination or a determination under clause (iii)(I).
- "(II) REQUIRED TIMELINES.—The violation of subparagraph (B) or (C), and any action carried out to remediate or otherwise address the violation, shall not affect any other applicable compliance date under subparagraph (A), (B), or (C).
- "(E) UNEXPECTED CIRCUMSTANCES.—If, while carrying out a proposed action after the completion of the NEPA process for that proposed action, a Federal agency or project sponsor encounters a new or unexpected circumstance or condition that may require the reevaluation of the proposed action under this title, the head of the Federal agency with responsibility for carrying out the NEPA process for the proposed action shall—
- "(i) consider whether mitigating the new or unexpected circumstance or condition is sufficient to avoid significant effects that may result from the circumstance or condition; and
- "(ii) if the head of the Federal agency determines under clause (i) that the significant effects that result from the circumstance or condition can be avoided, mitigate the circumstance or condition without carrying out the NEPA process again.
  - "(2) AUTHORIZATIONS AND PERMITS.—
- "(A) IN GENERAL.—Not later than 90 days after the date described in section 109(3)(B)(ii), the head of a Federal agency shall issue—
- "(i) any necessary permit or authorization to carry out the proposed action; or
- "(ii) a denial of the permit or authorization necessary to carry out the proposed action
- "(B) EFFECT OF FAILURE TO ISSUE AUTHOR-IZATION OR PERMIT.—If a permit or authorization described in subparagraph (A) is not issued or denied within the period described in that subparagraph, the permit or authorization shall be considered to be approved.
  - "(C) DENIAL OF PERMIT OR AUTHORIZATION.—
- "(i) IN GENERAL.—If a permit or authorization described in subparagraph (A) is denied, the head of the Federal agency shall describe to the project sponsor—
- "(I) the basis of the denial; and
- "(II) recommendations for the project sponsor with respect to how to address the reasons for the denial.
- "(ii) RECOMMENDED CHANGES.—If the project sponsor carries out the recommendations of the head of the Federal agency under clause (i)(II) and notifies the head of the Federal agency that the recommendations have been carried out, the head of the Federal agency—
- "(I) shall decide whether to issue the permit or authorization described in subparagraph (A) not later than 90 days after date on which the project sponsor submitted the notification; and
- "(II) shall not carry out the NEPA process with respect to the proposed action again."
- (2) AGENCY PROCESS REFORMS.—Section 105 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (as added by paragraph (1)(B)) is amended by adding at the end the following:
- "(c) Prohibitions.—In carrying out the NEPA process, the head of a Federal agency may not—
- "(1) consider whether a proposed action or an alternative to the proposed action considered by the head of the Federal agency, including the design, environmental impact,

- mitigation measures, or adaptation measures of the proposed action or alternative to the proposed action, has an effect on climate change:
- "(2) with respect to a proposed action or an alternative to the proposed action considered by the head of the Federal agency, consider the effects of the emission of greenhouse gases on climate change;
- "(3) consider an alternative to the proposed action if the proposed action is not technically or economically feasible to the project sponsor; or
- "(4) consider an alternative to the proposed action that is not within the jurisdiction of the Federal agency.
  - "(d) Environmental Documents.-
- "(1) EIS REQUIRED.—In carrying out the NEPA process for a proposed action that requires the preparation of an environmental impact statement, the head of a Federal agency shall produce for the proposed action not more than 1—
  - "(A) environmental impact statement;
- "(B) if necessary, environmental assessment; and
  - "(C) record of decision.
- "(2) EIS NOT REQUIRED.—In carrying out the NEPA process for a proposed action that does not require the preparation of an environmental impact statement, the head of a Federal agency shall produce for the proposed action not more than 1—
  - "(A) environmental assessment; or
  - "(B) finding of no significant impact.
  - "(e) CATEGORICAL EXCLUSIONS.—
- "(1) IN GENERAL.—Notwithstanding any other provision of law and subject to paragraph (2), the head of a Federal agency may, without further approval, use a categorical exclusion under this title that has been approved by—
  - "(A)(i) another Federal agency; and
- "(ii) the Council on Environmental Quality: or
- "(B) an Act of Congress.
- "(2) REQUIREMENTS.—The head of a Federal agency may use a categorical exclusion described in paragraph (1) if the head of the Federal agency—
- "(A) carefully reviews the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion; and
- "(B) considers the circumstances associated with the proposed action to ensure that there are no extraordinary circumstances that warrant the preparation of an environmental assessment or an environmental impact statement.
- "(3) EXTRAORDINARY CIRCUMSTANCES.—If the head of a Federal agency determines that extraordinary circumstances are present with respect to a proposed action, the head of the Federal agency shall—
- "(A) consider whether mitigating circumstances or other conditions are sufficient to avoid significant effects of the proposed action; and
- "(B) if the head of the Federal agency determines that those significant effects can be avoided, apply a categorical exclusion to the proposed action.
- "(f) REUSE OF WORK; DOCUMENTS PREPARED BY QUALIFIED 3RD PARTIES.—
- "(1) IN GENERAL.—In carrying out the NEPA process for a proposed action—
- ''(A) subject to paragraph (2), the head of a Federal agency shall—  $\,$
- "(i) use any applicable findings and research from a prior NEPA process of any Federal agency; and
- "(ii) incorporate the findings and research described in clause (i) into any applicable analysis under the NEPA process; and
- "(B) a Federal agency may adopt as an environmental impact statement, environmental assessment, or other environmental

- document to achieve compliance with this title—
- "(i) an environmental document prepared under the law of the applicable State if the head of the Federal agency determines that the environmental laws of the applicable State—
- "(I) provide the same level of environmental analysis as the analysis required under this title; and
- "(II) allow for the opportunity of public comment; or
- "(ii) subject to paragraph (3), an environmental document prepared by a qualified third party chosen by the project sponsor, at the expense of the project sponsor, if the head of the Federal agency—
- "(I) provides oversight of the preparation of the environmental document by the third party; and
- "(II) independently evaluates the environmental document for the compliance of the environmental document with this title.
- "(2) REQUIREMENT FOR THE REUSE OF FIND-INGS AND RESEARCH.—The head of a Federal agency may reuse the applicable findings and research described in paragraph (1)(A) if—
- "(A)(i) the project for which the head of the Federal agency is seeking to reuse the findings and research was in close geographic proximity to the proposed action; and
- "(ii) the head of the Federal agency determines that the conditions under which the applicable findings and research were issued have not substantially changed; or
- "(B)(i) the project for which the head of the Federal agency is seeking to reuse the findings and research was not in close geographic proximity to the proposed action; and
- "(ii) the head of the Federal agency determines that the proposed action has similar issues or decisions as the project.
- "(3) REQUIREMENTS FOR CREATION OF ENVIRONMENTAL DOCUMENT BY QUALIFIED 3RD PARTIES —
- "(A) IN GENERAL.—A qualified third party may prepare an environmental document intended to be adopted by a Federal agency as the environmental impact statement, environmental assessment, or other environmental document for a proposed action under paragraph (1)(B)(ii) if—
- "(i) the project sponsor submits a written request to the head of the applicable Federal agency that the head of the Federal agency approve the qualified third party to create the document intended to be adopted by a Federal agency as the environmental impact statement, environmental assessment, or other environmental document; and
- "(ii) the head of the Federal agency determines that—
- "(I) the third party is qualified to prepare the document: and
- $\lq\lq(II)$  the third party has no financial or other interest in the outcome of the proposed action.
- "(B) DEADLINE.—The head of a Federal agency that receives a written request under subparagraph (A)(i) shall issue a written decision approving or denying the request not later than 30 days after the date on which the written request is received.
- "(C) NO PRIOR WORK.—The head of a Federal agency may not adopt an environmental document under paragraph (1)(B)(ii) if the qualified third party began preparing the document prior to the date on which the head of the Federal agency issues the written decision under subparagraph (B) approving the request.
- "(D) DENIALS.—If the head of a Federal agency issues a written decision denying the request under subparagraph (A)(i), the head of the Federal agency shall submit to the project sponsor with the written decision the

findings that served as the basis of the denial.

- "(g) MULTI-AGENCY PROJECTS.—
- "(1) DEFINITIONS.—In this subsection:
- "(A) COOPERATING AGENCY.—The term 'cooperating agency' means a Federal agency involved in a proposed action that—
  - "(i) is not the lead agency; and
- "(ii) has the jurisdiction or special expertise such that the Federal agency needs to be consulted—
  - "(I) to use a categorical exclusion; or
- "(II) to prepare an environmental assessment or environmental impact statement, as applicable.
- "(B) LEAD AGENCY.—The term 'lead agency' means the Federal agency selected under paragraph (2)(A).
  - "(2) AGENCY DESIGNATION.—
- "(A) LEAD AGENCY.—In carrying out the NEPA process for a proposed action that requires authorization from multiple Federal agencies, the heads of the applicable Federal agencies shall determine the lead agency for the proposed action.
- "(B) INVITATION.—The head of the lead agency may invite any relevant State, local, or Tribal agency with Federal authorization decision responsibility to be a cooperating agency.
- "(3) RESPONSIBILITIES OF LEAD AGENCY.— The lead agency for a proposed action shall—
- "(A) as soon as practicable and in consultation with the cooperating agencies, determine whether a proposed action requires the preparation of an environmental impact statement: and
- "(B) if the head of the lead agency determines under subparagraph (A) that an environmental impact statement is necessary—
- "(i) be responsible for coordinating the preparation of an environmental impact statement;
- "(ii) provide cooperating agencies with an opportunity to review and contribute to the preparation of the environmental impact statement and environmental assessment, as applicable, of the proposed action, except that the cooperating agency shall limit comments to issues within the special expertise or jurisdiction of the cooperating agency; and
- "(iii) subject to subsection (c), as soon as practicable and in consultation with the cooperating agencies, determine the range of alternatives to be considered for the proposed action.
- "(4) ENVIRONMENTAL DOCUMENTS.—In carrying out the NEPA process for a proposed action, the lead agency shall prepare not more than 1 of each type of document described in paragraph (1) or (2) of subsection (d), as applicable—
- "(A) in consultation with cooperating agencies; and
- "(B) for all applicable Federal agencies.
- "(5) PROHIBITIONS.—
- "(A) IN GENERAL.—A cooperating agency may not evaluate an alternative to the proposed action that has not been determined to be within the range of alternatives considered under paragraph (3)(B)(iii).
- "(B) OMISSION.—If a cooperating agency submits to the lead agency an evaluation of an alternative that does not meet the requirements of subsection (c), the lead agency shall omit the alternative from the environmental impact statement.
  - "(h) Reports.—
  - "(1) NEPA DATA.—
- "(A) IN GENERAL.—The head of each Federal agency that carries out the NEPA process shall carry out a process to track, and annually submit to Congress a report containing, the information described in subparagraph (B).
- "(B) INFORMATION DESCRIBED.—The information referred to in subparagraph (A) is,

- with respect to the Federal agency issuing the report under that subparagraph—
- "(i) the number of proposed actions for which a categorical exclusion was issued during the reporting period;
- "(ii) the length of time the Federal agency took to issue the categorical exclusions described in clause (i);
- "(iii) the number of proposed actions pending on the date on which the report is submitted for which the issuance of a categorical exclusion is pending;
- "(iv) the number of proposed actions for which an environmental assessment was issued during the reporting period;
- "(v) the length of time the Federal agency took to complete each environmental assessment described in clause (iv):
- "(vi) the number of proposed actions pending on the date on which the report is submitted for which an environmental assessment is being drafted;
- "(vii) the number of proposed actions for which an environmental impact statement was issued during the reporting period;
- "(viii) the length of time the Federal agency took to complete each environmental impact statement described in clause (vii); and
- "(ix) the number of proposed actions pending on the date on which the report is submitted for which an environmental impact statement is being drafted.
  - "(2) NEPA costs .-
- "(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget shall jointly develop a methodology to assess the comprehensive costs of the NEPA process.
- "(B) REQUIREMENTS.—The head of each Federal agency that carries out the NEPA process shall—
- "(i) adopt the methodology developed under subparagraph (A); and
- "(ii) use the methodology developed under subparagraph (A) to annually submit to Congress a report describing—
- "(I) the comprehensive cost of the NEPA process for each proposed action that was carried out within the reporting period; and
- "(II) for a proposed action for which the head of the Federal agency is still completing the NEPA process at the time the report is submitted—
- "(aa) the amount of money expended to date to carry out the NEPA process for the proposed action; and
- "(bb) an estimate of the remaining costs before the NEPA process for the proposed action is complete.".
- (3) LEGAL REFORMS.—Section 105 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (as amended by paragraph (2)) is amended by adding at the end the following:
  - "(i) JUDICIAL REVIEW.—
- "(1) STANDING.—Notwithstanding any other provision of law, a plaintiff may only bring a claim arising under Federal law seeking judicial review of a portion of the NEPA process if the plaintiff pleads facts that allege that the plaintiff has personally suffered, or will likely personally suffer, a direct, tangible harm as a result of the portion of the NEPA process for which the plaintiff is seeking review.
  - "(2) STATUTE OF LIMITATIONS.—
- "(A) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subparagraph (B)(ii), a claim arising under Federal law seeking judicial review of any portion of the NEPA process shall be barred unless it is filed not later than the earlier of—
- "(i) 150 days after the final agency action under the NEPA process has been taken; and

- "(ii) if applicable, an earlier date after which judicial review is barred that is specified in the Federal law pursuant to which the judicial review is allowed.
  - "(B) NEW INFORMATION.
- "(i) Consider for the purpose of a supplemental environmental impact statement new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under the regulations of the Federal agency.
- "(ii) STATUTE OF LIMITATIONS BASED ON NEW INFORMATION.—If a supplemental environmental impact statement is required under the regulations of a Federal agency, a claim for judicial review of the supplemental environmental impact statement shall be barred unless it is filed not later than the earlier of—
- "(I) 150 days after the publication of a notice in the Federal Register that the supplemental environmental impact statement is final; and
- "(II) if applicable, an earlier date after which judicial review is barred that is specified in the Federal law pursuant to which the judicial review is allowed.
- "(C) SAVINGS CLAUSE.—Nothing in this paragraph creates a right to judicial review.
  "(3) REMEDIES.—
- "(A) PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS.—
- "(i) IN GENERAL.—Subject to clause (ii), in a motion for a temporary restraining order or preliminary injunction against a Federal agency or project sponsor in a claim arising under Federal law seeking judicial review of any portion of the NEPA process, the plaintiff shall establish by clear and convincing evidence that—
- ``(I) the plaintiff is likely to succeed on the merits;
- "(II) the plaintiff is likely to suffer irreparable harm in the absence of the temporary restraining order or preliminary injunction, as amplicable:
- "(III) the balance of equities is tipped in the favor of the plaintiff; and
- "(IV) the temporary restraining order or preliminary injunction is in the public interest.
- "(ii) ADDITIONAL REQUIREMENTS.—A court may not grant a motion described in clause (i) unless the court—
- "(I) makes a finding of extraordinary circumstances that warrant the granting of the motion;
- "(II) considers the potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs resulting from granting the motion; and
- ''(III) notwithstanding any other provision of law, applies the requirements of Rule 65(c) of the Federal Rules of Civil Procedure.
  - "(B) PERMANENT INJUNCTIONS.—
- "(i) IN GENERAL.—Subject to clause (ii), in a motion for a permanent injunction against a Federal agency or project sponsor a claim arising under Federal law seeking judicial review of any portion of the NEPA process, the plaintiff shall establish by clear and convincing evidence that—
- "(I) the plaintiff has suffered an irreparable injury;
- "(II) remedies available at law, including monetary damages, are inadequate to compensate for the injury;
- "(III) considering the balance of hardship between the plaintiff and defendant, a remedy in equity is warranted;
- ``(IV) the public interest is not disserved by a permanent injunction; and
- ``(V) if the error or omission of a Federal agency in a statement required under this title is the grounds for which the plaintiff is

seeking judicial review, the error or omission is likely to result in specific, irreparable damage to the environment.

- "(ii) ADDITIONAL SHOWING.—A court may not grant a motion described in clause (i) unless—
- "(I) the court makes a finding that extraordinary circumstances exist that warrant the granting of the motion; and
- "(II) the permanent injunction is—
- "(aa) as narrowly tailored as possible to correct the injury; and
- "(bb) the least intrusive means necessary to correct the injury.".
- (4) OTHER REFORMS.—Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is amended by inserting after section 105 (as amended by paragraph (3)) the following:

#### "SEC. 106. EPA REVIEW.

- "(a) DEFINITION OF FEDERAL AGENCY.—In this section, the term 'Federal agency' includes a State that has assumed the responsibility of a Federal agency under—
- "(1) section 107; or
- $\lq\lq(2)$  section 327 of title 23, United States Code.
- "(b) EPA COMMENTS.—The Administrator of the Environmental Protection Agency (referred to in this section as the 'Administrator') may comment on a draft or final submission of an environmental impact statement from any Federal agency.
- "(c) Technical Assistance.—The Administrator may, on request of a Federal agency preparing a draft or final environmental impact statement, provide technical assistance in the completion of that environmental impact statement.

#### "SEC. 107. PROJECT DELIVERY PROGRAMS.

- "(a) DEFINITION OF AGENCY PROGRAM.—In this section, the term 'agency program' means a project delivery program established by a Federal agency under subsection (b)(1).
- "(b) Establishment.—
- "(1) IN GENERAL.—The head of each Federal agency, including the Secretary of Transportation, shall carry out a project delivery program
  - ``(2) Assumption of responsibility.-
- "(A) IN GENERAL.—Subject to subparagraph (B), the head of each Federal agency shall, on request of a State, enter into a written agreement with the State, which may be in the form of a memorandum of understanding, in which the head of each Federal agency may assign, and the State may assume, the responsibilities of the head of the Federal agency under this title with respect to 1 or more projects within the State that are under the jurisdiction of the Federal agency.
- "(B) EXCEPTION.—The head of a Federal agency shall not enter into a written agreement under subparagraph (A) if the head of the Federal agency determines that the State is not in compliance with the requirements described in subsection (c)(4).
- ''(C) Additional responsibility.—If a State assumes responsibility under subparagraph (A)—
- "(i) the head of the Federal agency may assign to the State, and the State may assume, all or part of the responsibilities of the head of the Federal agency for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project;
- "(ii) at the request of the State, the head of the Federal agency may also assign to the State, and the State may assume, the responsibilities of the head of the Federal agency under this title with respect to 1 or more projects within the State that are under the jurisdiction of the Federal agency; but

- "(iii) the head of the Federal agency may not assign responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506).
- "(D) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Federal agency.
- "(E) FEDERAL RESPONSIBILITY.—Any responsibility of a Federal agency not explicitly assumed by the State by written agreement under subparagraph (A) shall remain the responsibility of the Federal agency.
- "(F) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Federal agency for which the written agreement applies, under applicable law (including regulations) with respect to a project.
- "(G) PRESERVATION OF FLEXIBILITY.—The head of the Federal agency may not require a State, as a condition of participation in the agency program of the Federal agency, to forego project delivery methods that are otherwise permissible for projects under applicable law.
- "(H) LEGAL FEES.—A State assuming the responsibilities of a Federal agency under this section for a specific project may use funds awarded to the State for that project for attorneys' fees directly attributable to eligible activities associated with the project.
- "(c) STATE PARTICIPATION.—
- "(1) Participating states.—Except as provided in subsection (b)(2)(B), all States are eligible to participate in an agency program.
- "(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the head of each Federal agency shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in any application of a State to participate in the agency program, including, at a minimum—
- "(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the agency program;
- "(B) verification of the financial resources necessary to carry out the authority that may be granted under the agency program; and
- "(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the agency program, including copies of comments received from that solicitation.
  - "(3) Public notice.—
- "(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in an agency program not later than 30 days before the date of submission of the application.
- "(B) METHOD OF NOTICE AND SOLICITATION.— The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.
- "(4) SELECTION CRITERIA.—The head of a Federal agency may approve the application of a State under this section only if—
- "(A) the regulatory requirements under paragraph (2) have been met;
- "(B) the head of the Federal agency determines that the State has the capability, including financial and personnel, to assume the responsibility; and
- "(C) the head of the State agency having primary jurisdiction over the project enters into a written agreement with the head of the Federal agency as described in subsection (d).

- "(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Federal agency that would have required the head of the Federal agency to consult with the head of another Federal agency, the head of the Federal agency shall solicit the views of the head of the other Federal agency before approving the application.
- "(d) WRITTEN AGREEMENT.—A written agreement under subsection (b)(2)(A) shall—
- "(1) be executed by the Governor or the top-ranking official in the State who is charged with responsibility for the project;
- "(2) be in such form as the head of the Federal agency may prescribe;
  - "(3) provide that the State—
- "(A) agrees to assume all or part of the responsibilities of the Federal agency described in subparagraphs (A) and (C) of subsection (b)(2):
- "(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Federal agency assumed by the State;
- "(C) certifies that State laws (including regulations) are in effect that—
- "(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and
- "(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and
- "(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;
- "(4) require the State to provide to the head of the Federal agency any information the head of the Federal agency reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State:
- "(5) have a term of not more than 5 years; and
  - "(6) be renewable.
  - "(e) JURISDICTION .-
- "(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.
- "(2) LEGAL STANDARDS AND REQUIRE-MENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the head of a Federal agency had the head of the Federal agency taken the actions in question.
- "(3) INTERVENTION.—The head of a Federal agency shall have the right to intervene in any action described in paragraph (1).
- "(f) EFFECT OF ASSUMPTION OF RESPONSI-BILITY.—A State that assumes responsibility under subsection (b)(2) shall be solely responsible and solely liable for carrying out, in lieu of and without further approval of the head of the Federal agency, the responsibilities assumed under subsection (b)(2), until the agency program is terminated under subsection (k).
- "(g) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the head of a Federal agency under any Federal law.
  - "(h) AUDITS.—
- "(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (d) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (b)(2)), for each State participating in an agency program, the head of a Federal agency shall—
- "(A) not later than 180 days after the date of execution of the agreement, meet with the

State to review implementation of the agreement and discuss plans for the first annual audit:

- "(B) conduct annual audits during each of the first 4 years of State participation; and
- "(C) ensure that the time period for completing an annual audit, from initiation to completion (including public comment and responses to those comments), does not exceed 180 days.
- "(2) PUBLIC AVAILABILITY AND COMMENT.—
- "(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.
- "(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the head of the Federal agency shall respond to public comments received under subparagraph (A).
  - "(3) AUDIT TEAM.—
- "(A) IN GENERAL.—An audit conducted under paragraph (1) shall be carried out by an audit team determined by the head of the Federal agency, in consultation with the State, in accordance with subparagraph (B).
- "(B) CONSULTATION.—Consultation with the State under subparagraph (A) shall include a reasonable opportunity for the State to review and provide comments on the proposed members of the audit team.
- "(i) MONITORING.—After the fourth year of the participation of a State in an agency program, the head of the Federal agency shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.
- "(j) REPORT TO CONGRESS.—The head of each Federal agency shall submit to Congress an annual report that describes the administration of the agency program.
  - "(k) TERMINATION.—
- "(1) TERMINATION BY FEDERAL AGENCY.— The head of a Federal agency may terminate the participation of any State in the agency program of the Federal agency if—
- "(A) the head of the Federal agency determines that the State is not adequately carrying out the responsibilities assigned to the State;
- "(B) the head of the Federal agency provides to the State—
- "(i) a notification of the determination of noncompliance;
- "(ii) a period of not less than 120 days to take such corrective action as the head of the Federal agency determines to be necessary to comply with the applicable agreement; and
- "(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and
- "(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the head of the Federal agency.
- "(2) TERMINATION BY THE STATE.—A State may terminate the participation of the State in an agency program at any time by providing to the head of the applicable Federal agency a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the head of the Federal agency may provide.
- "(1) CAPACITY BUILDING.—The head of a Federal agency, in cooperation with representatives of State officials, may carry out education, training, peer-exchange, and other initiatives as appropriate—
- "(1) to assist States in developing the capacity to participate in the agency program of the Federal agency; and
- "(2) to promote information sharing and collaboration among States that are partici-

pating in the agency program of the Federal agency.

- "(m) RELATIONSHIP TO LOCALLY ADMINISTERED PROJECTS.—A State granted authority under an agency program may, as appropriate and at the request of a local government.—
- "(1) exercise that authority on behalf of the local government for a locally administered project; or
- "(2) provide guidance and training on consolidating and minimizing the documentation and environmental analyses necessary for sponsors of a locally administered project to comply with this title and any comparable requirements under State law.".
- (5) PROHIBITION ON GUIDANCE.—No Federal agency, including the Council on Environmental Quality, may reissue the final guidance of the Council on Environmental Quality entitled "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews" (81 Fed. Reg. 51866 (August 5, 2016)) or substantially similar guidance unless authorized by an Act of Congress.
- (6) DEFINITIONS.—Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (as amended by paragraph (1)(A)) is amended by adding at the end the following:

### "SEC. 109. DEFINITIONS.

"In this title:

- "(1) ENVIRONMENTAL ASSESSMENT.—The term 'environmental assessment' has the meaning given the term in section 1508.9 of title 40, Code of Federal Regulations (or a successor regulation).
- ''(2) ENVIRONMENTAL IMPACT STATEMENT.— The term 'environmental impact statement' means a detailed statement required under section 102(2)(C).
  - "(3) NEPA PROCESS.—
- "(A) In general.—The term 'NEPA process' means the entirety of every process, analysis, or other measure, including an environmental impact statement, required to be carried out by a Federal agency under this title before the agency undertakes a proposed action.
- "(B) PERIOD.—For purposes of subparagraph (A), the NEPA process—
- "(i) begins on the date on which the head of a Federal agency receives an application for a proposed action from a project sponsor; and
- "(ii) ends on the date on which the Federal agency issues, with respect to the proposed action—
- "(I) a record of decision, including, if necessary, a revised record of decision;
- "(II) a finding of no significant impact; or "(III) a categorical exclusion under this
- "(4) PROJECT SPONSOR.—The term 'project sponsor' means a Federal agency or other entity, including a private or public-private entity, that seeks approval of a proposed action."
- (7) CONFORMING AMENDMENTS.—
- (A) POLICY REVIEW.—Section 309 of the Clean Air Act (42 U.S.C. 7609) is repealed.
- (B) SURFACE TRANSPORTATION PROJECT DE-LIVERY PROGRAM.—Section 327 of title 23, United States Code, is amended—
- (i) in subsection (a)(1), by striking "The Secretary" and inserting "Subject to subsection (m), the Secretary"; and
- (ii) by adding at the end the following:
- "(m) SUNSET.—
- "(1) IN GENERAL.—Except as provided under paragraph (2), the authority provided by this section terminates on the date of enactment of this subsection.
- "(2) EXISTING AGREEMENTS.—Subject to the requirements of this section, the Secretary

- may continue to enforce any agreement entered into under this section before the date of enactment of this subsection.".
- (b) ATTORNEY FEES IN ENVIRONMENTAL LITIGATION.—
- (1) Administrative procedure.—Section 504(b)(1) of title 5, United States Code, is amended—
- (A) in subparagraph (E), by striking "and" at the end;
- (B) in subparagraph (F), by striking the period at the end and inserting "; and"; and
  - (C) by adding at the end the following:
- "(G) 'special factor' does not include knowledge, expertise, or skill in environmental litigation.".
- (2) UNITED STATES AS PARTY.—Section 2412(d)(2) of title 28, United States Code, is amended—
- (A) in subparagraph (H), by striking "and" at the end;
- (B) in subparagraph (I), by striking the period at the end and inserting "; and"; and
- (C) by adding at the end the following:
- "(J) 'special factor' does not include knowledge, expertise, or skill in environmental litigation.".

SA 2268. Mr. LEE submitted an amendment intended to be proposed to amendment SA 2137 proposed by Mr. SCHUMER (for Ms. SINEMA (for herself, Mr. PORTMAN, Mr. MANCHIN, Mr. CASSIDY, Mrs. SHAHEEN, Ms. COLLINS, Mr. TESTER, Ms. MURKOWSKI, Mr. WARNER, and Mr. ROMNEY)) to the bill H.R. 3684, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division G, add the following: TITLE XII—PAYMENTS IN LIEU OF TAXES SEC. 71201. SHORT TITLE.

This title may be cited as the "Making Obligations Right by Enlarging Payments In Lieu of Taxes Act" or the "MORE PILT Act".

### SEC. 71202. FINDINGS; SENSE OF CONGRESS.

- (a) FINDINGS.—Congress finds that—
- (1) Congress agreed with recommendations of a Federal commission that, if Federal land is to be retained by the Federal Government and not contribute to the tax bases of the units of general local government within the jurisdictions of which the land is located, compensation should be offered to those units of general local government to make up for the presence of nontaxable land within the jurisdictions of those units of general local government:
- (2)(A) units of general local government rely on the stability of property tax revenues; and
- (B) Federal programs that are subject to the annual appropriations process, such as the payment in lieu of taxes program, offer far less certainty than property taxes as a form of revenue for units of general local government:
- (3) Federal agencies have determined that payments to units of general local government under the payment in lieu of taxes program are far lower than would be due to units of general local government under tax equivalency;
- (4) payments under the payment in lieu of taxes program help units of general local government carry out vital services, such as firefighting, police protection, public education, construction of public schools, construction of roads, and search-and-rescue operations; and
- (5) the technology exists to more accurately approximate what the taxable value of